

111TH CONGRESS
1ST SESSION

S. 79

To amend the Social Security Act to establish a Federal Reinsurance Program for Catastrophic Health Care Costs.

IN THE SENATE OF THE UNITED STATES

JANUARY 6, 2009

Mr. KERRY introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Social Security Act to establish a Federal Reinsurance Program for Catastrophic Health Care Costs.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Healthy Businesses,
5 Healthy Workers Reinsurance Act of 2009”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) The cost of health insurance premiums for
9 families has risen 100 percent since 2000, 4 times

1 the growth in overall inflation and workers' earn-
 2 ings.

3 (2) Health insurance premium increases have
 4 resulted in a nearly 6 percentage point drop in the
 5 number of firms choosing to offer coverage to their
 6 workers over that time period.

7 (3) Today, just 49 percent of firms with be-
 8 tween 3 and 9 employees offer health insurance ben-
 9 efits, down from 58 percent in 2001.

10 (4) The decline in employer-sponsored coverage
 11 has added to the growing problem of the uninsured.
 12 An additional 5,000,000 Americans have been added
 13 to the ranks of the uninsured since 2001.

14 (5) Health care costs are highly concentrated.
 15 Catastrophically or chronically ill individuals account
 16 for nearly 80 percent of health care spending, with
 17 10 percent of individuals accounting for over 60 per-
 18 cent of spending, and just 1 percent driving over 20
 19 percent of health care costs.

20 **SEC. 3. FEDERAL REINSURANCE PROGRAM FOR CATA-**
 21 **STROPHIC HEALTH CARE COSTS.**

22 (a) PROGRAM.—The Social Security Act (42 U.S.C.
 23 301 et seq.) is amended by adding at the end the following
 24 new title:

1 **“TITLE XXII—FEDERAL REIN-**
 2 **SURANCE PROGRAM FOR**
 3 **CATASTROPHIC HEALTH**
 4 **CARE COSTS**

5 **“SEC. 2201. OFFICE OF FEDERAL REINSURANCE.**

6 “(a) IN GENERAL.—There is established within the
 7 Department of Health and Human Services an office to
 8 be known as the ‘Office of Federal Reinsurance’.

9 “(b) DUTY.—The Office of Federal Reinsurance shall
 10 establish and administer the Federal Reinsurance Pro-
 11 gram for Catastrophic Health Care Costs in accordance
 12 with the provisions of this title.

13 **“SEC. 2202. PROGRAM.**

14 “(a) ESTABLISHMENT.—

15 “(1) IN GENERAL.—The Office shall establish
 16 and administer a Federal Reinsurance Program for
 17 Catastrophic Health Care Costs under which rein-
 18 surance payments are provided to eligible health
 19 plans that experience catastrophic health care costs
 20 during a year with respect to an individual covered
 21 under the plan. For purposes of this title, the term
 22 ‘individual covered under the plan’ includes employ-
 23 ees, retirees, spouses, and dependants.

24 “(2) PROGRAM TO BEGIN IN 2010.—The Office
 25 shall establish the Program in a manner so that re-

1 insurance payments are made with respect to cata-
 2 strophic health care costs occurring on or after Jan-
 3 uary 1, 2010.

4 “(3) ELIGIBLE HEALTH PLAN.—

5 “(A) IN GENERAL.—In this title, the term
 6 ‘eligible health plan’ means any of the following:

7 “(i) A group health plan that meets
 8 the requirements described in subpara-
 9 graph (B).

10 “(ii) A governmental plan (as defined
 11 in section 3(32) of the Employee Retire-
 12 ment Income Security Act of 1974) that
 13 meets the requirements described in sub-
 14 paragraph (B).

15 “(iii) A multiemployer plan (as de-
 16 fined in section 3(37) of the Employee Re-
 17 tirement Income Security Act of 1974)
 18 that meets the requirements described in
 19 subparagraph (B).

20 “(iv) A plan that offers coverage
 21 through health purchasing cooperatives in
 22 conjunction with a State health program
 23 that makes available health insurance cov-
 24 erage to the small group market and the
 25 individual market on the same terms and

1 that meets the requirements described in
2 subparagraph (B).

3 “(B) REQUIREMENTS.—The requirements
4 described in this subparagraph are that—

5 “(i) the plan involved—

6 “(I) provides eligibility for health
7 insurance coverage (after any waiting
8 period (as defined in section
9 9801(b)(4))) to all full-time employees
10 of the employer maintaining or con-
11 tributing to the plan;

12 “(II) ensures that if there is a
13 deductible under the plan, such de-
14 ductible does not exceed \$1,000 for an
15 individual and \$2,000 for a family;

16 “(III) ensures that the plan of-
17 fers preventative benefits; and

18 “(IV) ensures that the plan em-
19 ploys effective high-cost case manage-
20 ment tools (in accordance with the
21 definition of disease management by
22 the Disease Management Association
23 of America) in order to reduce costs
24 over time; and

“(ii) the employer maintaining or contributing to the plan involved pays at least 50 percent of the costs of health insurance coverage for each employee covered under the plan (regardless of whether the employee is a full-time or part-time employee).

“(C) COST-OF-LIVING ADJUSTMENT.—

“(i) IN GENERAL.—In the case of any calendar year after 2010, each dollar amount in subparagraph (B)(ii) shall be increased by an amount equal to—

“(I) such dollar amount, multiplied by

“(II) the cost-of-living adjustment determined under section 1(f)(3) of the Internal Revenue Code of 1986 for such calendar year determined by substituting ‘calendar year 2009’ for ‘calendar year 1992’ in subparagraph (B) thereof.

“(ii) DATE FOR DETERMINATION.—For purposes of clause (i), section 1(f)(4) of such Code shall be applied by substituting ‘March 31’ for ‘August 31’, and

1 the Secretary of the Treasury shall publish
 2 the adjusted amounts under subparagraph
 3 (B)(ii) for the calendar year not later than
 4 June 1 of the preceding calendar year.

5 “(iii) ROUNDING.—If any increase
 6 under clause (i) is not a multiple of \$50,
 7 such increase shall be rounded to the near-
 8 est multiple of \$50.

9 “(D) EMPLOYER.—For purposes of this
 10 title, the term ‘employer’ includes the Federal
 11 government and any other governmental entity
 12 (within the meaning of section 5000(d) of In-
 13 ternal Revenue Code of 1986).

14 “(b) ENROLLMENT.—

15 “(1) PROCEDURES.—The Office shall establish
 16 procedures for the enrollment of eligible health plans
 17 in the Program.

18 “(2) APPLICATION AND ANNUAL RECERTIFI-
 19 CATION.—

20 “(A) IN GENERAL.—The procedures estab-
 21 lished under paragraph (1) shall include a proc-
 22 ess for an eligible health plan—

23 “(i) to submit an application to the
 24 Office for enrollment in the Program; and

1 “(ii) to be annually recertified for en-
2 rollment in the Program.

3 “(B) REQUIREMENT.—The application and
4 recertification process under subparagraph (A)
5 shall require that an eligible health plan submit
6 to the Office—

7 “(i) a detailed description of the pro-
8 jected and actual reduction in total costs
9 under the plan that are a result of the
10 Program, including both individual and
11 employer portions; and

12 “(ii) such other information deter-
13 mined appropriate by the Office.

14 “(3) APPROVAL.—

15 “(A) IN GENERAL.—The procedures estab-
16 lished under paragraph (1) shall provide for the
17 approval or disapproval of applications and re-
18 quests for recertification submitted by eligible
19 health plans under paragraph (2).

20 “(B) SPECIFIC REQUIREMENT.—The Of-
21 fice shall not approve an application or a re-
22 quest for recertification unless the Office finds
23 that the eligible health plan is reducing total
24 costs under the plan, based on the information

1 submitted under paragraph (2)(B) and audits
 2 conducted under paragraph (4).

3 “(4) AUDITS.—The Office shall conduct audits
 4 of claims data of eligible health plans in order to en-
 5 sure that the eligible health plan is in compliance
 6 with the requirements under the Program, including
 7 the requirement under paragraph (3)(B). An eligible
 8 health plan shall not be eligible for reinsurance pay-
 9 ments unless it provides the Office with access to
 10 such data.

11 “(c) COST-SHARING IN COSTS OF PROGRAM.—

12 “(1) IN GENERAL.—An eligible health plan that
 13 participates in the Program shall pay the fee estab-
 14 lished by the Office under paragraph (2).

15 “(2) AUTHORIZATION.—The Office is author-
 16 ized to charge a fee to each eligible health plan that
 17 participates in the Program. Any amounts collected
 18 shall be deposited into the Trust Fund.

19 “(3) REQUIREMENTS.—In establishing the fee
 20 under paragraph (2)—

21 “(A) the Office shall consult with inter-
 22 ested parties; and

23 “(B) shall ensure that the amount of such
 24 fee is not excessive so as to unduly discourage

1 eligible health plans from enrolling in the Pro-
 2 gram.

3 “(d) APPEALS PROCESS.—The Office shall establish
 4 an appeals process under the Program.

5 “(e) PROCEDURES TO PROTECT AGAINST FRAUD,
 6 WASTE, AND ABUSE.—The Office shall establish proce-
 7 dures to protect against fraud, waste, and abuse under
 8 the Program.

9 **“SEC. 2203. REINSURANCE PAYMENTS.**

10 “(a) AMOUNT.—

11 “(1) IN GENERAL.—The amount of a reinsur-
 12 ance payment under the Program to an eligible
 13 health plan that experiences catastrophic health care
 14 costs in a year with respect to an individual covered
 15 under the plan shall be an amount equal to 75 per-
 16 cent of such costs.

17 “(2) CATASTROPHIC HEALTH CARE COSTS.—

18 “(A) IN GENERAL.—In this title, the term
 19 ‘catastrophic health care costs’ means, with re-
 20 spect to a year, costs for medical care (as de-
 21 fined in section 9832(d)(3) of the Internal Rev-
 22 enue Code of 1986) provided under an eligible
 23 health plan to an individual covered under the
 24 plan, but only with respect to such costs which
 25 exceed \$50,000.

1 “(B) NEGOTIATED PRICES.—In deter-
 2 mining the amount of catastrophic health care
 3 costs under the Program, the eligible health
 4 care plan shall take into account any negotiated
 5 price concessions, such as discounts, direct or
 6 indirect subsidies, rebates, and direct or indi-
 7 rect remunerations, obtained by the plan.

8 “(C) INFLATION ADJUSTMENT.—

9 “(i) IN GENERAL.—In the case of a
 10 calendar year after 2010, the \$50,000
 11 amount in subparagraph (A) shall be in-
 12 creased by an amount equal to—

13 “(I) such dollar amount; multi-
 14 plied by

15 “(II) the percentage (if any) by
 16 which the average of the medical care
 17 component of the Consumer Price
 18 Index for all urban consumers (United
 19 States city average) for the 12-month
 20 period ending with August of the pre-
 21 ceding calendar year exceeds such av-
 22 erage for the 12-month period ending
 23 with August 2009.

24 “(ii) ROUNDING.—If any dollar
 25 amount after being increased under clause

1 (i) is not a multiple of \$1,000, such dollar
 2 amount shall be rounded to the nearest
 3 multiple of \$1,000.

4 “(b) REQUESTS FOR PAYMENT.—To be eligible for
 5 a reinsurance payment with respect to an individual for
 6 a year, an eligible health plan shall submit to the Office,
 7 at a time and in a manner determined appropriate by the
 8 Office, a request for payment that contains—

9 “(1) a certification—

10 “(A) that the plan paid or incurred cata-
 11 strophic health care costs during the year with
 12 respect to the individual; and

13 “(B) of the amount of such costs; and

14 “(2) such other information determined appro-
 15 priate by the Office.

16 “(c) PAYMENTS FROM TRUST FUND.—

17 “(1) IN GENERAL.—Payments to eligible health
 18 plans under the Program shall be made from the
 19 Trust Fund.

20 “(2) TAX TREATMENT.—For purposes of the
 21 Internal Revenue Code of 1986—

22 “(A) payments from the Trust Fund to the
 23 eligible health plan shall not be included in
 24 gross income; and

1 “(B) no deduction shall be allowed to the
 2 eligible health plan with respect to the payment
 3 of any catastrophic health care costs for the
 4 portion of such costs which was reimbursed
 5 from the Trust Fund.

6 **“SEC. 2204. FEDERAL REINSURANCE FOR CATASTROPHIC**
 7 **HEALTH CARE COSTS TRUST FUND.**

8 “(a) CREATION OF TRUST FUND.—There is estab-
 9 lished in the Treasury of the United States a trust fund
 10 to be known as the ‘Federal Reinsurance for Catastrophic
 11 Health Care Costs Trust Fund’, consisting of such
 12 amounts as may be appropriated or credited to the Trust
 13 Fund (including any fees deposited under section
 14 2202(c)).

15 “(b) MANDATORY APPROPRIATIONS.—There are ap-
 16 propriated to the Trust Fund such sums as may be nec-
 17 essary in order to make the reinsurance payments re-
 18 quired under section 2203.

19 “(c) RULES REGARDING TRANSFERS TO AND MAN-
 20 AGEMENT OF TRUST FUND.—For purposes of this sec-
 21 tion, rules similar to the rules of sections 9601 and 9602
 22 of the Internal Revenue Code of 1986 shall apply.

23 “(d) DISTRIBUTION OF AMOUNTS IN TRUST
 24 FUND.—Amounts in the Trust Fund shall be available for
 25 making payments under section 2203.

1 **“SEC. 2205. REPORTS.**

2 “(a) SECRETARY.—

3 “(1) IN GENERAL.—Not later than March 1,
4 2012, and biennially thereafter, the Secretary shall
5 submit to Congress a report on the Program.

6 “(2) REQUIREMENTS.—

7 “(A) IN GENERAL.—Each report submitted
8 under paragraph (1) shall contain—

9 “(i) a detailed description of the Pro-
10 gram, including a detailed description of
11 the impact the Program has had on reduc-
12 ing premiums for health insurance cov-
13 erage and increasing the number of indi-
14 viduals with health insurance coverage; and

15 “(ii) any other information or rec-
16 ommendations determined appropriate by
17 the Secretary.

18 “(B) INDIVIDUAL MARKET.—The first re-
19 port submitted under paragraph (1) shall also
20 contain recommendations regarding expanding
21 the Program to the individual market.

22 “(C) CONSULTATION.—The Secretary shall
23 consult with the National Association of Insur-
24 ance Commissioners in preparing each report
25 under paragraph (1).

26 “(b) GAO.—

1 “(1) IN GENERAL.—Not later than March 1,
 2 2012, and biennially thereafter, the Comptroller
 3 General of the United States shall submit to Con-
 4 gress and the Secretary a report on the Program.

5 “(2) REQUIREMENTS.—

6 “(A) IN GENERAL.—Each report submitted
 7 under paragraph (1) shall contain—

8 “(i) a detailed description of the Pro-
 9 gram, including a detailed description of
 10 the impact the Program has had on reduc-
 11 ing premiums for health insurance cov-
 12 erage and increasing the number of indi-
 13 viduals with health insurance coverage; and

14 “(ii) any other information or rec-
 15 ommendations determined appropriate by
 16 the Comptroller General.

17 “(B) INDIVIDUAL MARKET.—The first re-
 18 port submitted under paragraph (1) shall also
 19 contain recommendations regarding expanding
 20 the Program to the individual market.

21 **“SEC. 2206. DEFINITIONS.**

22 “In this title:

23 “(1) GROUP HEALTH PLAN.—The term ‘group
 24 health plan’ has the meaning given such term by

1 section 5000(b)(1) of the Internal Revenue Code of
2 1986.

3 “(2) INDIVIDUAL MARKET; SMALL GROUP MAR-
4 KET.—The terms ‘individual market’ and ‘small
5 group market’ have the meanings given such terms
6 by section 2791 of the Public Health Service Act.

7 “(3) OFFICE.—The term ‘Office’ means the Of-
8 fice of Federal Reinsurance established under sec-
9 tion 2201.

10 “(4) PROGRAM.—The term ‘Program’ means
11 the Federal Reinsurance Program for Catastrophic
12 Health Care Costs under this title.

13 “(5) TRUST FUND.—The term ‘Trust Fund’
14 means the Federal Reinsurance for Catastrophic
15 Health Care Costs Trust Fund established under
16 section 2204.”.

17 (b) FUNDING START-UP ADMINISTRATIVE COSTS
18 FOR PROGRAM.—

19 (1) IN GENERAL.—There are appropriated to
20 the Secretary of Health and Human Services
21 \$200,000,000 to carry out the provisions of, and
22 amendments made by, this Act.

1 (2) AVAILABILITY.—Amounts appropriated
2 under paragraph (1) shall remain available until
3 September 30, 2010.

○